

**CHAPTER 38****RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN –  
ANNUITY OVERPAYMENTS****3801 CAUSES OF OVERPAYMENTS**

Overpayments in retiree annuity payments may be caused by one or more of the following situations:

380101. Failure of the annuitant, custodian, or guardian to notify the Secretary of the Military Department concerned (or designee) of:

- A. Remarriage of the annuitant, before age 60 or death
- B. Youngest child reaching age 18
- C. Marriage or death of a child annuitant
- D. Recovery of an incapacitated child
- E. Termination of student status

380102. Erroneous computation

380103. Correction of member's military records

380104. Concurrent payment of RSFPP annuity and DIC if the RSFPP was payable based on the service of a member who retired for disability before completing 18 years of service after October 5, 1961, or before completing 19 years of service after November 1, 1968.

380105. A secretarial determination that a member is alive after the Secretary of the Military Department concerned (or designee) previously determined that the member was presumed dead. The member is liable for any indebtedness created where the annuity payments were made based on the presumption of such member's death. The member's indebtedness cannot be considered for waiver under 10 U.S.C. 2774 or 1442 (reference (c)). If the member dies before those payments are fully recovered, the annuitant may be liable for the indebtedness if the annuitant was the recipient of the annuity payments made under the presumption of death. (See Chapter 28, Table 28-1, of this volume for collection of indebtedness from retired or retiree pay.)

**3802 RECOVERY OF OVERPAYMENTS**

Upon discovery of an overpayment, start recovery action immediately. Advise the annuitant of the debt and the method in which the overpayment is being, or may be, recovered.

3803 METHOD OF RECOVERY

The debt resulting from an annuity overpayment shall be liquidated by one of the following methods.

380301. Direct remittance to the DFAS-Denver Center

380302. Reduction by the DFAS-Denver Center of later RSFPP annuity payments, or withholding of future annuity payments until debt has been liquidated.

3804 WAIVER OF INDEBTEDNESS

When applicable, the DFAS-Denver Center advises the annuitant of the right to request a waiver of indebtedness.

380401. Recovery of an overpayment of the RSFPP annuity is not required if, in the judgment of the DFAS Director, or the Director's designee, there was no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purpose of the plan or against equity and good conscience. Proof of hardship is not required if the waiver otherwise is in order. Suspension of collection action may be authorized on receipt of a waiver request. Refund of an amount withheld before receipt of a request for waiver is not authorized. When a waiver is granted, refund amounts collected after receipt of the waiver request.

380402. Failure to withhold the cost of coverage from retired pay of a member cannot be considered an overpayment of annuity to a designated beneficiary to authorize waiver of recovery of the overpayment.

380403. RSFPP annuitants who obtain a correction of records for entitlement to additional survivorship annuity under a second election may not retain the benefits of the original election. A correction made under 10 U.S.C. 1552 (reference (c)), except when procured by fraud, is final and conclusive on all officers of the United States. Recovery of overpayments that occur in these instances may not be waived under 10 U.S.C. 1442 (reference (c)). Repayment may be made over a reasonable period of time as determined by the retired pay activity.